

D.T.E. 02-18

Investigation by the Department of Telecommunications and Energy into the Petition of KeySpan Energy Delivery New England for approval of Firm Gas Transportation Agreements with Algonquin Gas Transmission Company

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I. INTRODUCTION

On March 22, 2002, KeySpan Energy Delivery New England (“KeySpan” or “Company”), pursuant to G.L. c. 164, §§ 76 and 94A, submitted a petition to the Department of Telecommunications and Energy (“Department”) for approval of three firm transportation agreements with the Algonquin Gas Transmission Company (“Algonquin”) (“Petition for Approval”). These contracts are: (1) a firm transportation agreement and negotiated rate between Boston Gas Company d/b/a KeySpan Energy Delivery New England (“Boston Gas”) and Algonquin; and (2) two firm transportation agreements and a negotiated rate between Colonial Gas Company d/b/a KeySpan Energy Delivery New England (“Colonial”) and Algonquin. This case has been docketed as D.T.E. 02-18.

On April 17, 2002, pursuant to notice duly issued, the Department conducted a public hearing to afford interested persons the opportunity to comment on the Company’s proposal. The Attorney General of the Commonwealth (“Attorney General”) intervened as of right, pursuant to G.L. c. 12, § 11E. The Department granted the Petition to Intervene of the Division of Energy Resources (“DOER”). The Department also granted the Petitions for Leave to Participate as a Limited Participant of Bay State Gas Company and New England Gas Company. On May 14, 2002, the Department held an evidentiary hearing. The Company presented the testimony of Elizabeth Danehy, the director of customer choice and gas resource management at KeySpan, and Theodore E. Poe, Jr., the manager of energy planning for KeySpan. The evidentiary record consists of 62 exhibits, consisting primarily of KeySpan’s responses to information and record requests. On May 20, 2002, the Company, the Attorney

General and DOER submitted briefs.

II. DESCRIPTION OF THE COMPANY'S PROPOSAL

The Company proposes an arrangement with Algonquin that is comprised of three firm transportation contracts. These contracts are: (1) a firm transportation agreement and negotiated rate between Boston Gas and Algonquin for up to 20,000 MMBtus/day, for a ten year term commencing November 1, 2002, or if later, the in-service date of the Hubline Project;¹ and (2) a firm transportation contract and the associated rate between Colonial and Algonquin for up to 15,000 MMBtus/day, for a ten year term commencing November 1, 2002, or if later, the in-service date of the Hubline Project; and (3) an interim agreement (the "Interim Agreement") between Colonial and Algonquin for 10,000 MMBtus/day, which will be provided pursuant to the Algonquin AFT-1 schedule for a period beginning December 1, 2001, and terminating with the in-service date of the Hubline Project (Petition for Approval at 5).

The proposed arrangement between the Company and Algonquin encompasses the following components: (1) the addition of up to 45,000 MMBtus/day of transportation capacity on the Hubline Project; (2) an interim allotment of 10,000 MMBtus/day of transportation capacity to serve Cape Cod; (3) infrastructure improvements to Algonquin's G Lateral pipeline facilities to enable the long-term delivery of increased gas supplies to Cape Cod; and (4) minimum guaranteed delivery pressures of 270 psig at the Company's take stations in Ponkapoag, Bourne and Sagamore, Massachusetts, which increases Algonquin's current commitment of 225 psig at

¹ The Hubline Project is Algonquin's proposed high-pressure natural gas pipeline from Beverly, Massachusetts, across Massachusetts Bay to Weymouth, Massachusetts (Petition for Approval at 3).

Bourne and Sagamore and 200 psig at Ponkapoag (Petition for Approval at 4).

Additionally, as a result of the Hubline arrangement, Duke Energy Gas Transmission Company (Algonquin's parent company) has agreed to construct, at no cost to the Company, two new gate stations to be located in Haverhill, Massachusetts (in the Essex Gas Company service area) and in Weymouth, Massachusetts (the Boston Gas service area). The new gate station in Haverhill will provide KeySpan with a direct interconnection to the Maritimes & Northeast Pipeline L.L.C. pipeline,² which will enhance both the operational flexibility and reliability of the Company's system as well as enhance the Company's ability to manage the resource mix of pipeline supply and on-system production (Exh. ECD-1, at 30).

The Company explained that its analysis of increasing the use of liquified natural gas ("LNG") to meet the identified needs of the Cape Cod Division showed that LNG does not present a least-cost supply strategy for KeySpan (id. at 13-15). The Company determined that acquiring additional capacity on the Algonquin pipeline was essential to: (1) avoid operational flow orders imposed by the pipeline (id. at 13); and (2) motivate Algonquin to proceed with the Company system improvements to Algonquin's G Lateral (id. at 15, 16).

The Company reached its conclusion to acquire additional capacity based on its assessment of need that resulted from the development of a unified forecast and supply plan for

² This will provide the Company two pipeline alternatives for serving the Essex Gas Company service area, i.e., Tennessee Gas Pipeline and Maritimes & Northeast Pipeline L.L.C..

the three Massachusetts LDCs that comprise KeySpan Energy Delivery New England³ (RR-DTE-1). The Company also indicated that the previous Forecast and Supply Plans for Boston Gas Company⁴ and Colonial Gas Company⁵ clearly identified the need for additional supplies during the peak heating season for both companies (id.).

The Company indicated that because the rate for the contracts under review has been negotiated between KeySpan and Algonquin, the rate will not change regardless of the firm tariff established subsequent to FERC review (Exh. AG-4). In addition, the Company indicated that the negotiated rate in the contracts is less than Algonquin's currently filed recourse rate at the FERC (Sealed Tr. at 75-76). The Company also indicated that it does not expect that the FERC will reject the rates negotiated with Algonquin (Tr. at 28). Finally, the Company indicated that it holds periodic discussions with marketers and provides marketers in the Companies' distribution territories with updates regarding pipeline capacity modifications (RR-DTE-3; Tr. 69-72).

III. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General recommends that the Department grant only conditional approval of the contracts pending further review and investigation into the prudence and public interest of these contracts (Attorney General Brief at 1). The Attorney General argues that the

³ Boston Gas Company, Colonial Gas Company and Essex Gas Company comprise KeySpan Energy Delivery New England.

⁴ Boston Gas Company, D.T.E. 97-81 (2000) ("D.T.E. 97-81")

⁵ Colonial Gas Company, D.T.E. 98-90 (2000) ("D.T.E. 98-90")

Company failed to demonstrate that the Hubline related agreements are consistent with an approved forecast and supply plan, nor has it provided sufficient evidence that the Hubline arrangements are part of “a potentially better combination of aggregate supply resources than what was proposed in the Company’s latest approved forecast and supply plan” (id. at 4).

The Attorney General notes that the Hubline pipeline capacity was not included in either Boston Gas’ or Colonial’s most recently approved long-range forecast and supply plan. The Attorney General contends that the Company therefore has failed to meet its burden of demonstrating that the capacity is part of a Department-approved long-range forecast and supply plan (id. at 2).

In addition, the Attorney General contends that the Company has failed to provide evidence which demonstrates that the proposed Hubline capacity provides a “reliable, diverse, and flexible gas supply at reasonable prices,” consistent with approved long-range planning and portfolio objectives (id. at 2). The Attorney General argues that the service agreements are not reviewable in this proceeding, because only the precedent agreements have been executed (id.). In addition, the Attorney General argues that the Company has not procured a gas supply to be transported on the Hubline, nor does the Company have any assurance that gas supply will be available to it when the Hubline Project is in-service. The Attorney General also notes that construction of the Hubline Project has not yet begun, pushing the in-service date out to the spring of 2003 or later and increasing the cost of the project over which the Company has no control or even review. Finally, the Attorney General argues that the Company’s economic analysis supporting the Hubline is questionable because the negotiated rates for Hubline service will not be filed for approval by FERC until 30 days before the in-service date (id. at 3).

The Attorney General concludes that the expedited schedule requested by the Company

in this case does not provide the opportunity for full discovery and cross examination of witnesses in the forecast and supply plan pending as KeySpan Energy Delivery New England, D.T.E. 01-105 (" DTE 01-105") (id. at 4). The Attorney General maintains that the long-range forecast and supply plan docket is the appropriate venue for the examination of all aspects of the Company's resource portfolio to determine the portfolio's adequacy, reliability and conformance with least cost requirements (id. at 4).

B. Division of Energy Resources

Although DOER states that the contracts entered into by Keyspan and Algonquin are largely appropriate and consistent with the obligation to provide reliable, least-cost gas, DOER contends that: (1) Keyspan's failure to consult marketers prior to executing these contracts undercut the effectiveness of the upstream capacity planning process; and (2) Keyspan's delay in submitting these contracts to the Department denied Keyspan customers the benefit and protection afforded by the Department's oversight and review of these contracts (id. at 6).

DOER also argues that the eight-month delay between the signing of these contracts and their submission to the Department for review is antithetical to the benefit of customers and limits the Department's ultimate authority over these contracts (id. at 6). In addition, DOER claims that such behavior interferes with the Department's obligation to determine whether the contracts are in the public interest, and reduces the value of the Department's review (id. at 5-6).

DOER requests that the Department condition the approval of the contracts to further review by the Department and order all local gas distribution companies to: (1) provide notice and engage in discussions with marketers prior to executing firm contracts; and (2) submit firm contracts for Department approval prior to the execution of such firm contracts (id. at 7)

C. Company

The Company requests that the Department approve the proposed contracts because they are consistent with Keyspan's resource portfolio objectives and compare favorably to the range of available resource alternatives (Company Brief at 5-6).

The Company notes that in support of its request for approval of the Hubline Agreements, the Company provided a peak-day and peak-season needs analysis which identified a need for additional city-gate deliverability in the Boston Gas and Cape Cod service areas (id. at 6). The Company argues that this analysis is consistent with, but not dependent upon, the forecast that Keyspan provided to the Department in the Long-Range Resource and Requirements Plan currently pending before the Department in D.T.E. 01-105 (id. at 6). The Company further argues that the forecasting methodology used to analyze both the Company's capacity requirements and to develop the supply plan pending in D.T.E. 01-105 is consistent with the methodology approved by the Department in Boston Gas' and Colonial's most recent forecast and supply plan filings (id. at 6).

The Company contends that a comparison of the sendout requirements and available resources approved by the Department in D.T.E. 97-81 and D.T.E. 98-90 and the requirements and resources presented in Exhibit TEP-3 also demonstrates the proposal's consistency with established portfolio objectives (id. at 8). The Company argues that the previously approved supply plans' projections that growth in the forecasted peak-day sendout requirements would require the procurement of additional resources support Keyspan's current claim that the Interim Agreement and the Hubline agreement are required to close the gap between resources and requirements (id. at 8). The Company submits that the proposed

agreements therefore meet Keyspan's portfolio objectives to provide: (1) increased city-gate delivery capability to Cape Cod for the period 2001-02 through 2005-06; and (2) increased city-gate delivery capability to the Boston Gas service area beginning in the 2003-04 peak season (id. at 9).

The Company further argues that the Hubline Agreements compare favorably to the range of alternatives reasonably available to Keyspan on both a price and non-price basis (id. at 9). The Company maintains that its evaluation of cost and reliability ramifications established that additional pipeline capacity is required to meet the design-day and design-season needs of the Keyspan system (id. at 10). The Company argues that in all cases, the Hubline Agreements were the least-cost approach based on price because the agreements compare favorably to the cost of acquiring capacity on existing delivery routes (id. at 10). In addition, the Company points out that the numerous non-price factors of the Hubline Agreements (i.e. the upgrading and reinforcing of the existing G lateral facility, the increase in minimum delivery pressure of 270 psig at the Bourne and Sagamore take stations, the construction of two new gate stations by Duke Energy, the introduction of Canadian volumes to the southernmost portion of Keyspan's system, and the flexibility to reduce commitment in the Boston Gas service area) further demonstrate the agreements' benefit and appropriateness (id. at 11-12).

IV. DISCUSSION

A. Standard of Review

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the Company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the Company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract renegotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region.

Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

B. Analysis and Findings

The Department notes that the supply planning process for Boston Gas Company was approved previously by the Department in Boston Gas Company, D.T.E. 97-81 (2000). The Department's approval of the most recent supply planning process for Colonial Gas Company was issued in Colonial Gas Company, D.T.E. 98-90 (2000). In these decisions, the Department approved the filings and the methodology used by the Companies to determine the need for additional resources.

The Department will now address the points raised by the Attorney General and DOER. The Attorney General suggests that the Hubline capacity was not included in either of the forecast and supply plans, therefore, the Department should conditionally approve these contracts pending approval of the forecast and supply plan currently under Department review in D.T.E. 01-105. We note that the forecast and supply plans for both Boston Gas and Colonial were submitted prior to the initial development of the Hubline plans. Also, the requirement that a commodity and/or capacity acquisition be consistent with a previously approved Forecast and Supply Plan, does not imply that a company must include the specific provider. Rather, those forecast and supply plans can merely indicate that additional resources will be needed. In the case of the Hubline, we note that the Maritimes and Northeast Pipeline, which will supply the Hubline, did not start delivering commodity until after the forecast and supply plans had been submitted. Consequently, it would have been impossible for Boston Gas

and Colonial Gas to predetermine in their 1997 and 1998 filings that the Hubline would be the source of choice for meeting the companies' increasing requirements. The record shows that the previous Forecast and Supply Plans of Boston Gas and Colonial Gas approved by the Department established that both companies would need incremental resources (See RR-DTE-1). The Department, therefore, finds that the contracts currently before us are consistent with the most recently approved forecast and supply plans for Boston Gas and Colonial Gas.

Next, the Attorney General argues that the Company has not provided evidence that the proposed contracts provide a reliable, diverse, and flexible gas supply at reasonable prices. The Department disagrees with the Attorney General's assertion. First, the Hubline contracts will deliver commodity from Canada's Sable Island. The Sable Island production area is a reliable source of natural gas (Tr. at 29). Second, the contracts will increase the diversity of resources available to the Weymouth area and Colonial's Cape Cod division by including the additional Sable Island supplies (id.) Third, the companies have shown that the negotiated rates between the Companies and Algonquin are less than the recourse rates Algonquin has filed with the FERC (id.)⁶.

The Department agrees with the Attorney General's concern regarding the limited period allowed for review as a result of the Companies' delayed submission, and directs KeySpan and the other jurisdictional LDCs, in the future, to submit any contract, containing a provision subjecting the price to be paid thereunder for gas for review and determination by the Department, pursuant to M.G.L. c. 164, § 94A, upon execution of the contract.

⁶ In the event that the negotiated rates change, the Company must submit revised contracts for Department review.

DOER requests that the Department conditionally approve the contracts in order to allow the Companies to engage in discussions with marketers who are active in the companies' service territories. We decline to grant only conditional approval. An LDC cannot effectively run its supply procurement, nor can suppliers throughout North America confidently negotiate contracts with an LDC, where the LDC's regulator grants merely conditional approval to supply contracts. Wholesale gas markets do not function well under such regulatory uncertainty; and there could well be adverse consequences for LDC procurement that redound to the disadvantage of ratepayers. Moreover, the notion of "conditional approval" as described by DOER is foreign to the § 94A regulatory scheme. The Department notes that the Company has indicated that it provides updates to marketers and periodically notifies those marketers active in its service territory of upcoming changes in the Company's capacity commitments (Tr. at 68-70). Moreover, the Department notes that it did not received any objections from individual marketers, marketer groups, or user groups regarding these particular contracts.

DOER also argues that the Company's delay in submitting these contracts denied KeySpan customers the benefit and protection afforded by the Department's oversight and review. As indicated above, the jurisdictional LDCs have been put on notice to provide a contract, containing a provision subjecting the price to be paid thereunder for gas for review and determination by the Department, pursuant to M.G.L. c. 164, § 94A, upon execution of the contract.

V. ORDER

Accordingly, after due notice and consideration, it is hereby

ORDERED: That the three firm transportation agreements with the Algonquin Gas Transmission Company are approved. These contracts are: (1) a firm transportation agreement and negotiated rate between Boston Gas Company d/b/a KeySpan Energy Delivery New England and Algonquin; and (2) two firm transportation agreements and a negotiated rate between Colonial Gas Company d/b/a KeySpan Energy Delivery New England and Algonquin.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).